

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 13

May 26, 2004

SUBJECT: NON-CATEGORICAL USE OF FORCE REPORTING - REVISED

PURPOSE: To clarify and streamline the use of force process, this Order revises the procedure for reporting Non-Categorical use of force incidents. While the process for *investigating* Non-Categorical uses of force has not changed, including requirements to conduct independent interviews and collect photographs and other physical evidence (4/245.10), this Order is expected to hasten the Non-Categorical use of force reporting process.

The purpose of this Order is to:

- * Clarify the definition of a reportable Non-Categorical use of force incident;
- * Establish a dual use of force reporting process (Levels I and II) to include an expedited procedure for reporting less serious Level II incidents;
- * Require supervisors investigating Level I use of force incidents to tape record the subject of the use of force and all non-Department employee witnesses;
- * Revise the procedure for gathering injury and medical treatment information in cases where the subject of the use of force refuses to sign an Authorization for Release of Medical Information Form (Medical Release Form);
- * Assign the Commanding Officer, Training Group (TG), as the final review authority for Non-Categorical use of force incidents; and,
- * Revise the Non-Categorical Use of Force Report, Form 1.67.05, and the Non-Categorical Internal Process Report, Form 1.67.04.

PROCEDURE:

I. NON-CATEGORICAL USE OF FORCE INCIDENT - DEFINED. A Non-Categorical use of force incident is defined as an incident in which any on-duty Department employee or off-duty employee whose occupation as a Department employee is a factor, uses a less-lethal control device or physical force to:

- * Compel a person to comply with the employee's direction; or,
- * Overcome resistance of a person during an arrest or a detention; or,

- * Defend any individual from an aggressive action by another person.

The following incidents are not reportable as a Non-Categorical use of force:

- * The use of a C-grip, firm grip, or joint lock to compel a person to comply with an employee's direction, which does not result in an injury or complained of injury;
- * The use of force reasonable to overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of a person (e.g., use of C-grip or firm grip, joint lock, joint lock walk down or body weight), which does not result in an injury or complained of injury;

Example: An officer uses a firm grip to overcome a suspect's initial resistance (i.e., pulling away) to being handcuffed. Since there are no injuries or complained of injuries, this incident is not a reportable use of force.

- * Under any circumstances, the discharge of a less-lethal projectile weapon (e.g., beanbag shotgun, TASER, 37mm or 40mm projectile launcher, any chemical control dispenser or Compressed Air Projectile System) that does not contact a person;

Note: Such incidents shall be reported on an Employee's Report, Form 15.7, and submitted to the commanding officer for review and appropriate action. After all risk management, misconduct, or policy issues are identified, the Form 15.7 shall be forwarded to TG for review and retention.

- * Force used by an organized squad in a crowd control situation, or a riotous situation when the crowd exhibits hostile behavior and does not respond to verbal directions from Department employees. Such incidents are documented via an after-action report or Sergeant's Daily Report, Form 15.48.0; and,

Note: Department Training Bulletin XXVIII dated October 1996 entitled, "Use of Force Baton - Part II, Crowd Management and Control," states that isolated incidents resulting from a crowd control situation may require a use of force investigation as determined by a supervisor at the scene.

- * Any incident investigated by Critical Incident Investigation Division (CIID).

II. NON-CATEGORICAL USE OF FORCE REPORTING LEVELS - ESTABLISHED. All Non-Categorical use of force incidents shall be initially classified by the investigating supervisor as either Level I or Level II and reported based on guidelines established in this Order.

A. Level I Incident. A Non-Categorical use of force shall be reported as a Level I incident under the following circumstances:

1. An allegation of unauthorized force is made regarding the force used by a Department employee(s); or,
2. The force used results in a serious injury, such as a broken bone, dislocation, an injury requiring sutures, etc., that does not rise to the level of a Categorical use of force incident; or,

Note: If the investigating supervisor is unable to verify the seriousness of an injury or complained of injury, it shall be reported as a Level I incident. If the injury requires admission to a hospital, the incident becomes a Categorical use of force and will be investigated by CIID.

3. The injuries to the person upon whom force was used are inconsistent with the amount or type of force reported by involved Department employee(s); or,
4. Accounts of the incident provided by witnesses and/or the subject of the use of force substantially conflict with the involved employee(s) account.

B. Level II Incident. All other reportable Non-Categorical uses of force that do not meet Level I criteria shall be reported as Level II incidents. This will include the use of an impact device or less-lethal munitions with hits.

Note: If the use of an impact device or less-lethal munitions causes a serious injury such as a broken bone, dislocation, or an injury requiring sutures, etc., and does not rise to the level of a Categorical use of force, it shall be reported as a Level I incident. Department employees are reminded that any person struck with a baton shall be transported to a Department approved medical facility for medical treatment prior to booking (Training Bulletin XXXV, Issue 6, May 2003).

III. NON-CATEGORICAL USE OF FORCE REPORTING - REVISED. The procedure for reporting Non-Categorical use of force incidents has been revised to include the changes listed below. With the exception of revisions outlined in this Order, Special Order No. 27, 2001, "Investigating and Adjudicating Non-Categorical Uses of Force," remains in effect.

A. Mandatory Tape-Recording. Supervisors investigating a Level I incident shall tape record statements from the subject of the use of force and all non-Department employee witnesses. Recorded interviews shall be conducted in accordance with Department guidelines established in *Complaint Investigations: A Guide for Supervisors*. If tape recording is not practical or an individual refuses, an explanation is required (See Section V for documentation guidelines).

B. Role of Witnessing Supervisor. Generally, a supervisor who witnessed a Non-Categorical use of force incident should not conduct a use of force investigation. However, the watch commander may make exceptions on a case-by-case basis, based on exceptional operational needs. The watch commander shall document the exceptional operational need in the Non-Categorical Use of Force Internal Process Report (IPR). Under no circumstances shall a supervisor *involved* in a use of

force incident be permitted to conduct the investigation.

Note: For purposes of this Order, an *involved supervisor* is defined as a supervisor who provided guidance or direction during the use of force, or participated in on-scene pre-planning or directing related to the incident.

- C. Authority to Approve Reports.** Non-Categorical use of force investigations and any related report(s) (i.e., the crime and/or arrest report or Form 15.7), shall be approved by an on-duty watch commander/officer in charge (OIC) or designee of supervisory rank. The supervisor who conducted the Non-Categorical use of force investigation shall not approve the Non-Categorical Use of Force Report (NCUOF Report) or the related report(s).

Note: The watch commander/OIC approving the use of force investigation is not required to be the same watch commander/OIC who reviewed and approved the related report(s). Generally, the involved Department employee's chain of command will conduct and approve the use of force investigation.

Example: Officers from Metropolitan Division (Metro) submit an arrest report to the watch commander, Area of occurrence, while the Metro supervisor assigned to investigate the related use of force submits the completed investigation to his/her Metro OIC.

- D. Watch Commander/Officer In Charge Insight.** A watch commander/OIC reviewing a Non-Categorical use of force investigation shall now document his/her insight on an IPR. As part of this evaluation, watch commander/OICs shall:

- * Evaluate whether or not the amount of force used was reasonable and consistent with actions reported by the involved Department employee(s), ensuring that all relevant tactical, use of force, and policy issues are addressed. The watch commander/OIC shall evaluate the force that was

used, not the force options that could have been considered;

- * Ensure that all supervisors are interviewed regarding their conduct at the scene during the incident; and,
- * Evaluate the actions of each of these supervisors.

IV. FORMS. The following Department forms are affected by this Order:

A. Non-Categorical Use of Force Report, Form 1.67.05 - Revised. The Non-Categorical Use of Force Report, Form 1.67.05, has been revised.

1. **Use of Form.** This form is used to report both Level I and II Non-Categorical use of force incidents.
2. **Completion.** Completion of this form has changed, and the following sections are affected:
 - * A check box is added to identify the incident as either a Level I or Level II incident;
 - * A medical treatment section is added to document injuries to the subject of the use of force, any medical treatment provided, by whom, and the name of the medical provider (i.e., medical facility). Additionally, supervisors shall check the appropriate box to indicate whether the information they documented in this section was:
 - ☐ Verified or provided by medical personnel;
 - ☐ Observed and reported by (non-medical) witnesses and/or Department employees; or,
 - ☐ Reported by the subject of force.

Only one box shall be checked. If "Verified" injury/treatment information cannot be obtained, "Observed" information is the next most desirable option, followed by information that is "Reported" by the subject of the use of force.

Note: Verified medical information is always preferable. However, due to federal guidelines protecting patient medical treatment information, this may not be possible, particularly when the subject of the use of force refuses to sign a Medical Release Form (Refer to Section V for revised guidelines in obtaining medical information in such cases).

- * A section entitled, "Witnesses" is added to list all individuals, including non-involved Department employees and partner officers, who witnessed the use of force and/or any relevant actions that preceded or followed the incident (If more space is needed, list additional witnesses in the narrative under the heading, *Witness Statements*);
- * Checkboxes have been added to verify that the subject of the use of force and each witness was interviewed separately (group interviews of witnesses are prohibited). If the subject of the use of force or a witness was not interviewed separately, supervisors shall leave the box unchecked and include that individual on "PAGE 3" of the NCUOF Report under "Witnesses Not Interviewed Separately" along with an explanation;
- * The Investigating Supervisor block now contains boxes to be checked by the investigating supervisor to verify that he/she:
 - ☐ Reviewed all reports related to the use of force incident;
 - ☐ Was not involved in the use of force; and,
 - ☐ Interviewed all involved Department employees separately;
- * The Watch Commander/OIC signature block now includes a checkbox to verify that the watch commander/OIC has reviewed all documents and reports related to the use of force; and,

- * The Control of Suspect section (Page 2) has been revised to report the use of a secondary restraint device, and shall be used to list all such devices used other than Department approved handcuffs.

3. **Completion of "PAGE 3."** The NCUOF Report has been expanded and now includes a third page to document the following information:

- * **Area Canvassed for Witnesses and Evidence.**
Supervisors shall document their efforts to canvass the area and locate evidence and witnesses, to include the scope of the search and the results of such efforts.
Additionally, if no witnesses can be identified or located, an explanation shall be provided in this section;

Example: "At approximately 0200 hours, I canvassed locations in the immediate vicinity of 1101 W. First Street where the incident occurred. Because the area is predominately commercial, all shops were closed for business due to the late hour, and I was unable to locate any witnesses."

- * **Witnesses Not Interviewed Separately.**
Supervisors shall list all witnesses who were not interviewed separately and explain why; and,

Example: "Robert Smith. Witness is a juvenile, and his parents were present during the interview."

- * **Incident Overview.** The Incident Overview shall now be documented on "PAGE 3" rather than the narrative (Level I incidents only). Supervisors shall, without offering opinions or conclusions, provide a brief summary of the incident and/or any relevant actions that preceded or followed the incident, to include

techniques and tactics used by the involved employee(s).

Note: Documenting an Incident Overview is not necessary for Level II incidents.

4. **Distribution.** Approved NCUOF Reports shall be forwarded via the chain of command to the Commanding Officer, TG, who is the final review authority for Non-Categorical use of force incidents. Upon final review, TG shall distribute copies of the NCUOF Report/investigation as follows:

- 1 - Original, Training Group
- 1 - Copy, employee's bureau commanding officer (for distribution to involved Area/division)

2 - TOTAL

- B. **Non-Categorical Use of Force Internal Process Report, Form 1.67.04 - Revised.** The Non-Categorical Use of Force Internal Process Report, Form 1.67.04, has been revised. A separate IPR shall be completed for each Department employee using force.

1. **Use of Form.** This form is used to record the findings and recommendations of the involved employee's chain of command and TG.

2. **Completion.** This form has been revised to reflect the following changes:

- * The IPR now includes a section for documenting a "Watch Commander/OIC's Insight";
- * A section has been added to document the types of force used by the employee named on the IPR;
- * A check box has been added to verify that a commanding officer reviewed the involved employee's use of force history;
- * The box indicating multiple use of force incidents has been removed. All force used during an incident involving the same subject

of the use of force shall be documented in one investigation;

- * A check box has been added to indicate if a commanding officer or acting commanding officer was not able to review the use of force investigation within the required time frame; and,

Note: Non-Categorical use of force investigations shall be reviewed by a commanding officer or acting commanding officer within 14 calendar days of occurrence. Investigations not reviewed within this time frame require a written explanation on the IPR under "Comments."

- * A signature block has been added for the Commanding Officer, TG.

3. Distribution. The IPR shall be attached and distributed with the NCUOF Report.

V. COMPLETING THE NARRATIVE - REVISED. In addition to completing Pages 1, 2, and 3 of the NCUOF Report, investigating supervisors shall prepare and attach a narrative using the revised guidelines outlined in this section. A checklist of headings required for Levels I and II are listed at the bottom of PAGE 3 and may be used as a reference.

A. Level I Incidents. Supervisors shall document a Non-Categorical use of force investigation using the following headings:

1. WITNESS STATEMENT(S). Supervisors shall interview the subject of the use of force, witnesses, and all Department employees who either witnessed and/or were involved in the incident.

a. Tape-Recording Witness Statements. Interviews with the subject of the use of force and all non-Department employee witnesses shall be tape-recorded. If tape-recording is impractical or a person refuses to be tape-

recorded, he/she shall be listed in this section along with an explanation as to why their interview was not tape-recorded and a brief written summary of his/her non-taped statement.

Example: "Janet Jones. This witness agreed to be interviewed on condition that she not be tape-recorded. Jones stated that she did not observe either of the responding officers strike the suspect."

Tape-recording interviews with Department employees is not required. The related crime and/or arrest report or Form 15.7 will serve as documentation of the involved Department employee(s) statement.

All tape recordings, including those from personal tape recorders, shall be booked at Scientific Investigation Division (SID) and have tape numbers issued. Tape numbers shall be documented in the NCUOF Report.

- b. Documentation of Statements.** The requirement for supervisors to prepare and attach full witness statements to the NCUOF Report has been eliminated. Moreover, a brief written summary of the statement provided by the subject of the use of force and/or any witness is only required under this heading **if**:

- * The interview was not tape-recorded (not applicable to Department employees); or,
- * The person's account of the use of force is in substantial conflict with the involved employee(s) account.

Example: "Gregory Jones. This witness stated that he saw a female officer strike the suspect with a closed fist. The involved officers stated that they did not strike the suspect at any time."

- c. **Consistent Statements.** Statements provided by witnessing Department employees that are consistent with events as depicted in the related report should be noted. Likewise, if statements provided by non-Department employee witnesses are consistent, this similarly shall be documented.

Example: "The statements provided by the following witnessing Department employees - Officers Nuno, Blake and Ramirez - were consistent with the incident as depicted in the arrest report."

- 2. **INJURIES/MEDICAL TREATMENT.** All individuals receiving medical treatment shall be asked to sign a Medical Release Form. If they refuse, the appropriate box shall be checked on the NCUOF Report. If an individual is unable to sign the Medical Release Form, supervisors shall explain why in this section (e.g., "Under the influence, psychological evaluation hold," etc.).
 - a. **Medical Release Obtained.** If a signed Medical Release Form is obtained, the procedure for collecting the necessary injury and medical information remains unchanged. This includes attempting to collect and verify treatment information relevant to the use of force based on interviews with medical personnel.
 - b. **Medical Release Not Obtained.** Federal law now limits access to an individual's medical history and treatment information. Therefore, if a signed Medical Release Form is not obtained, supervisors shall not ask medical personnel for injury and treatment information pertaining to an individual upon whom force was used. Rather, supervisors shall attempt to collect medical information based on personal observations and/or statements from the subject of the use of force, the involved employee(s), and non-medical witnesses. Supervisors shall only collect the medical

information necessary to complete the use of force investigation.

Supervisors shall document non-verified medical information on the face sheet of the NCUOF Report and check the appropriate box to indicate the source of the information (i.e., "Observed" or "Reported by Suspect.") Supervisors shall document their efforts to obtain medical information in this section.

Example: "The suspect declined to sign a Medical Release Form. However, Officer Jones stated that he heard the suspect advise Fire Department personnel that he believed his left arm was broken. According to Officer Jones, the suspect stated to him that he believed he may have injured his arm in an attempt to avoid handcuffing. I arrived at the hospital and observed the suspect with a cast on his left arm." (In this case, supervisors would list "Possible Broken Arm" on the NCUOF Report face sheet and check off "Observed.")

Generally, it is permissible for Department employees to obtain medical information they may overhear or observe, as a bystander, if there is a legitimate law enforcement reason for their presence at the location (e.g., if a suspect in custody requires medical treatment, an officer may reasonably accompany him/her during treatment). In such cases, information overheard from a treating physician shall be reported as "Verified," and an explanation as to how the information was collected shall be provided.

Regardless of whether a signed Medical Release is obtained, supervisors shall ask the subject of the use of force if and how he/she was injured and document the response in this section. Any documentation of medical treatment obtained by Department employees shall be listed under "Addenda" and attached to the NCUOF Report.

Note: Due to potential criminal and civil liability issues, Department employees shall not accept any medical documentation regarding the subject of the use of force unless a signed Medical Release Form is obtained.

3. **PHOTOGRAPHS AND OTHER EVIDENCE.** Photographs should be taken and included in all Non-Categorical use of force investigations. If a photograph is impractical (e.g., the subject of the use of force refuses to be photographed, etc.), an explanation shall be documented in this section. Otherwise, the following photographs shall be taken:

- * Visible injuries - or lack thereof - to the subject of the use of force in the complained of area. When it is necessary to photograph the breasts, buttocks, or genitalia, SID shall take the photographs;
- * Visible injuries - or lack thereof - incurred by the involved Department employee(s) if relevant to the use of force, or when a criminal filing for a crime against a peace officer (e.g., 148 or 243 PC, etc.,) will be sought;

Example: Taking photographs of an officer's hand when the complainant claims he was punched by the officer numerous times to document the absence or presence of redness or swelling to the hand.

- * The scene of the incident and evidence collected if it is relevant to the use of force and/or sustained injuries (or lack thereof); and,
- * The vantage point of a witness when it may prove useful in resolving conflicting statements between witnesses as it relates to the use of force.

Note: Photographs taken with a digital camera by Department employees will suffice for recording Level II investigations. Photographs taken by SID are preferred for Level I investigations.

All photographs, including those taken by SID, shall be printed and attached, and listed individually under the heading, "Addenda." A brief description of each photograph shall be included in this section. Photographs taken by SID shall reference the appropriate "C" number obtained from SID. Computer disks (of photographs) shall be placed in an envelope and the envelope marked with the corresponding Addendum number. All SID photographs shall be attached to the NCUOF Report prior to the watch commander/OIC approving the report.

4. **INVESTIGATING SUPERVISOR'S NOTES.** Supervisors shall use this heading to address substantial conflicts and/or discrepancies between statements provided by a witness or the subject of the use of force and statements provided by involved Department employees. To assist in the evaluation of these differences, supervisors shall attempt to establish each witness's vantage point when they observed the use of force, as well as any other variables such as time of day, lighting, weather conditions, noise level, or traffic patterns.
 - a. **Requirements for Witnessing Investigating Supervisor.** Investigating supervisors who witnessed the incident shall summarize their observations in this section and list themselves as a witness under "Witnesses/Non-Involved Employee Witnesses" on the NCUOF Report.
 - b. **Verbal Warning Requirements.** Per Human Resources Bureau Notice dated September 28, 2001, "Verbal Warning Requirement For a Use of Force - Revised," Department employees are, in certain circumstances, required to provide a

verbal warning prior to the use of less-lethal force. This section shall be used to document the name of the employee giving the warning and what was said. Likewise, in cases where a warning was required but not given, supervisors shall provide an explanation here. If no warning was required, no documentation is necessary.

Any other information relevant to the investigation that does not fall under the previous headings may be documented in this section.

5. **ADDENDA**. Supervisors shall numerically list all addenda items (attachments) to the NCUOF Report (e.g., 1. Arrest Report 2. Vehicle Impound Report 3. Authorization for Release of Medical Information, etc.) and include a brief description of each item. The number that corresponds to the listed item shall be written in red pen or pencil on the lower right corner of each attached document.

B. Level II Incidents. The process for documenting/reporting Level II incidents shall mirror that of a Level I incident, with the following exceptions:

- * Tape-recording non-Department employee witnesses is optional;
- * The requirement for an "Incident Overview" is eliminated; and,
- * The requirement to document any witness statements in the narrative of the NCUOF Report is eliminated. The related crime and/or arrest report or Form 15.7 will serve as documentation of statements for the subject of the use of force, witnesses, and involved Department employees. Any discrepancies between statements shall still be addressed in "Investigating Supervisor's Notes."

Note: Discrepancies that constitute a substantial conflict between witness or suspect accounts and

the involved employee(s) account shall be reported as a Level I incident.

VI. OFFICER'S RESPONSIBILITY. Department employees involved in a use of force are required to thoroughly document their investigation, including the facts surrounding the use of force, in the crime and/or arrest report or Form 15.7. Employees shall document the name of the investigating supervisor in their related report under the heading, "Additional."

VII. SUPERVISOR'S RESPONSIBILITY. The investigating supervisor shall review the related report(s) after it has been approved by the watch commander/OIC but prior to completing the use of force investigation, to ensure that the incident as depicted in the related report(s) is consistent with the use of force investigation. A Follow-up Investigation, Form 3.14, may be used to make any necessary corrections to the related report or to provide additional information.

AMENDMENTS: This Order amends Sections 2/245.10, 3/796.5, 4/245.05, 5/1.67.04, and 5/1.67.05 of the Department Manual.

FORM AVAILABILITY: Copies of the revised Non-Categorical Use of Force Report, Form 1.67.05, and the revised Non-Categorical Use of Force Internal Process Report, Form 1.67.04, are attached for duplication and immediate use. The existing forms will be updated on the Local Area Network (LAN) and all forms will be available for ordering from the Department of General Services, Distribution Center, in about 90 days.

AUDIT RESPONSIBILITY: The Office of Human Resources shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

WILLIAM J. BRATTON
Chief of Police

Attachments

DISTRIBUTION "D"